



2009

FAIR LABOR ASSOCIATION INDEPENDENT EXTERNAL MONITORING REPORT

COMPANY: Jostens, Inc.
COUNTRY: Mexico
FACTORY CODE: 220050215H
MONITOR: Accordia Global Compliance
Group
AUDIT DATE: October 9, 2009
PRODUCTS: Uniforms
PROCESSES: Sewing, Finishing, Packaging
NUMBER OF WORKERS: 150

FLA Comment: This report was submitted with a corresponding corrective action plan to the FLA and was reviewed by FLA staff. In an effort to improve the effectiveness of remediation, the FLA has provided feedback and recommendations to the company; however, they have not been agreed to or incorporated by the company with respect to the mandated savings fund, 28 days labor contracts and the implementation of the exclusion clause in the CBA (see WBOT.14, F.3 and FOA.27 below). The report is posted in its current state and is considered finalized. Updates on the progress of the corrective actions will be posted when received by the company.



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Wages, Benefits and Overtime Compensation: General Compliance Wages, Benefits and Overtime Compensation

WBOT.1 Employers shall comply with all local laws, regulations and procedures concerning the payment of wages and benefits, including overtime compensation. In any case where laws and the FLA Code are contradictory, the standard that provides the greatest protection for workers shall apply. Where provisions are lacking, employers shall take measures to reasonably accommodate matters concerning the payments of wages and benefits, including overtime compensation. (S)

Noncompliance

Explanation: It was observed that deductions of more than 30% of workers' salaries were taken from savings, debts and cafeteria discounts. (Federal Labor Law 110)

Plan Of Action: With limited exception, any deductions from workers' salaries are voluntary. Specifically:

1. [Factory name] allows deductions from salary in payment for cafeteria expenses and compensates employees for 50% of the cost of the cafeteria food.
2. [Factory name] provides a Savings Fund where employee contributes \$20.00 and firm contributes \$20.00. This benefit is confirmed by the Collective Bargaining Agreement (CBA) in place at the facility.
3. [Factory name] is not aware of any personal loan repayment that exceeds 30% of workers' salaries. [Factory name] will implement a policy to assure that no personal loan repayment will exceed 30% of the worker's salary. With the additional information provided above, [Factory name] is confident its practices do not contradict applicable laws or FLA requirements.

Deadline Date:

Action Taken:

Plan Complete: No

Plan Complete Date:

Wages, Benefits and Overtime Compensation: Voluntary Wage Deductions

WBOT.14 Voluntary wage deductions for savings clubs, loan payments, etc. can only be made with the express and written consent of workers and shall be documented in employee files. All such voluntary deductions shall be credited to proper accounts and funds shall not be held illegally or inappropriately by employers. (S)

Noncompliance

Explanation: It was noted that all workers are obligated to deduct \$20.00 in pesos for “Fondo de Ahorro” (Savings Fund), Federal Labor Law 110. The decision for workers to join “fondo de ahorro” or not must be collected individually, and cannot be part of CBA or required at time of hire. Workers interviewed have confirmed issue of forced non-voluntary deduction during the interviews with monitor. Workers confirm that they cannot refuse to join “fondo de ahorro” and expect to have their job. In the Ley Federal in Article 110-IV, it is clearly established that deductions of “fondo de ahorro” must be freely accepted by workers, meaning voluntary on the individual’s behalf. This is the labor law of the country and not subject to interpretation otherwise by legal counsel. Additionally, factory is in violation with FLA compliance benchmark requirement for voluntary wage deduction, which supports the monitor’s conclusion and finding.

Plan Of Action: The CBA between [Factory name] and union is registered at the Board of Conciliation and Arbitration. This agreement documents, regulates, and provides approval by employees for Savings Fund benefit. As such, this agreement and practice is not contrary to law or FLA requirements. [Factory name], Jostens’ supplier of certain licensed products, deducts \$20.00 in pesos for Fondo de Ahorro (savings fund) pursuant to the CBA between [Factory name] and union. Auditor explains that “the decision regarding whether or not workers will join the “fondo de ahorro” must be collected individually and cannot be part of the CBA or the hiring procedures. “ We have again undertaken review of this matter with our Mexican counsel and understand that this is not a correct statement of the law. Further, while auditor correctly notes that the CBA can supersede the FLA Benchmark when such action is not to the detriment of workers’ interests, we respectively disagree with auditor’s conclusion that this action is detrimental to workers. [Factory name] matches its employees’ contributions to this fund; thus, this is a benefit provided to its employees and not a detriment to their interests.

Deadline Date:

Action Taken:

Plan Complete: No

Plan
Complete
Date:

Forced Labor: Employment Terms/Voluntary Agreement

F.3 Employment terms shall be those to which the worker has voluntarily agreed, in as far as those terms do not fall below provisions of local laws, freely negotiated and valid collective bargaining agreements, or the FLA Code. (P)

Noncompliance

Explanation: Factory establishes temporary labor contracts for 28 days and 4 months without any legal reason. (Ley Federal del Trabajo - Federal Labor Law Articles 35, 36 and 37) Federal Labor Law does not permit a temporary contract for a definite or specific number of days. The only part of the law that states a number of days in a labor relationship is Article 47-I; this article provides the opportunity for employer to end the labor relation without any legal and economic consequences.

This option must be applied in the first 30 days of the labor relation by either of 2 options:

1. When a worker cannot prove their ability to do the job that company requires according to the worker's position and responsibility;
2. If workers provide false documentation in hiring process. Employer needs to notify worker of this situation, however, in the first 30 days of the labor relationship.

There is no "probation period" within the labor relation between employer and employee in Mexico. Additionally, the law does not provide, in the Ley Federal de Trabajo, for any short-term contracts as practiced by this factory. Workers are entitled to a labor contract that is indefinite in term once they meet their 30-day trial period and prove they can do the job. Once the contract is terminated, in this case by the factory, the labor benefits resulting from the termination (e.g., payment of cesantia (severance)) is required to be paid by factory. This is contrary to the labor practices of companies who wish to have flexibility in labor contracts within Mexico, which are intended to circumvent the law and are in clear violation with Mexican labor law.



Plan Of Action: [Factory name] retains certain employees on a year-round basis pursuant to at-will contracts. However, due to the seasonality of Jostens' customer requirements with respect to graduation products, [Factory name] needs to increase its production during months of October through May to cover Jostens' customers' increased requirements during this period. To accommodate this increased demand, [Factory name] needs to hire temporary workers on fixed-term contracts during this period. After the season is over, the temporary employees' agreements terminate and these employees stop working for [Factory name]. Federal Labor Law Articles 35, 36, and 37 allow for this practice, which has been specifically approved by the Labor Secretary. (See attached Exhibit A.) Therefore, Jostens would like this issue removed from this audit. As explained in Jostens' response, due to the seasonality of Jostens' customer requirements, [Factory name] at times retains temporary workers on fixed-term contracts to cover spikes in production. This is specifically allowed by Mexican labor laws, as cited in Jostens' response. The auditor seems to focus on laws regarding probationary periods, which are not applicable to this situation. Further, auditor states that [Factory name] provides 28 day contracts, which is incorrect.

Deadline Date:

Action Taken:

Plan Complete: No

Plan Complete Date:

Forced Labor: Employment Terms/Prohibitions

F.4 There can be no employment terms (including in contracts or any other instruments or in any formal or informal recruitment arrangements) which: specify that employees can be confined or be subjected to restrictions on freedom of movement; allow employers to hold wages already earned; provide for penalties resulting in paying back wages already earned; or in any way punish workers for terminating employment. (P)

Noncompliance

Explanation: The Internal Regulation Handbook establishes under Clause 34 that workers will pay for errors in production.

Plan Of Action: Federal Labor Law Article-110 (I) allows for employer to deduct mistakes, losses, and deviations from an employee's wages; however, it cannot be greater than 30% of the salary in excess of minimum wage. [Factory name] does not, in general, enforce this practice. Furthermore, [Factory name] will review Clause 34 of its Internal Regulation Handbook to reflect that workers will pay for losses only if employee intentionally damages company's equipment.

**Deadline
Date:**

**Action
Taken:**

**Plan
Complete:** No

**Plan
Complete
Date:**



Forced Labor: Employment Records

F.9 Employers shall maintain sufficient hiring and employment records to demonstrate and verify compliance with this Code provision. (P)

Noncompliance

Explanation: No labor contract was available in 1 of 25 personnel files reviewed.

Plan Of Action: [Factory name] performed an audit on all workers' files and updated any that were found to not contain the applicable contracts.

Deadline Date:

Action Taken:

Plan Complete: No

Plan Complete Date:



Freedom of Association: Restoration of Worker Rights/Reinstatement

FOA.27 Workers who have been unjustly dismissed, demoted or otherwise suffered a loss of rights and privileges at work due to an act of union-discrimination shall, subject to local laws, be entitled to restoration of all the rights and privileges lost, including reinstatement, if they so desire. (S)

Noncompliance

Explanation: CBA establishes under Clause 18 that factory shall fire those workers who quit or are expelled by the union. (Federal Labor Law 358) Federal labor law, under Article 358, specifies that no worker can be obligated or forced to join a union. The article referred to by the company also establishes the fact that the employer can never use a workers' refusal to join the union against the employee. Company refers to the commonly named "clausula de exclusion" that permits companies to separate those workers who refuse to join the union and accept the CBA; however, on April 17, 2001, the Supreme Court of Justice of the Nation established that "clausula de exclusion" are in violation of Articles 5, 9 and 123-A fr. XVI, of the Federal Constitution. In this case, it is the duty of monitor to: 1) seek the greatest level of protection afforded to workers and 2) respect the supreme law of the country rather than the labor law. Where 2 laws are in conflict, the one that provides the greatest protection for a worker shall apply.

Plan Of Action: Clause 18 of the CBA is based on Article 395 of the federal labor law, which establishes that a CBA may provide that the employer must separate from their jobs those individuals who withdraw or are expelled from the contracting union. Such provision is legal under Mexican law and is required by most unions. Therefore, Jostens would like to remove this issue from this audit. The CBA between [Factory name] and the union requires [Factory name] to dismiss employees who quit or are expelled by the union. This is specifically allowed by Mexican labor law. The auditor states that, pursuant to Mexican labor law, workers cannot be obligated to join a union; if workers refuse to join the union, the employer can never use this decision against the employees. Pursuant to guidance received from our counsel, this is an incorrect statement of Mexican law. Further, the court case cited by the auditor provides guidance only and is not a binding precedent; thus, it is not an established case law relevant to this matter.

Deadline Date:

Action Taken:

Plan Complete: No

Plan
Complete
Date:

Code Awareness:

GEN.3 Develop a secure communications channel, in a manner appropriate to the culture and situation, to enable Company employees and employees of contractors and suppliers to report to the Company on noncompliance with the workplace standards, with security that they shall not be punished or prejudiced for doing so.

Noncompliance

Explanation: No direct channel of communication has been established between the workers of [Factory name] and Jostens, Inc.

Plan Of [Factory name] will allow its employees to use a suggestion box to communicate with
Action: Jostens about noncompliance with workplace standards. [Factory name] will forward any communications to Jostens in a timely manner.

Deadline
Date:

Action
Taken:

Plan No
Complete:

Plan
Complete
Date:

Health and Safety: Permits and Certificates

H&S.8 The employer shall at all times be in possession of all legally required and valid permits and certificates related to health and safety issues, such as those related to the purchase and storage of chemicals, fire safety inspections, inspection of machinery, and (chemical) waste disposal. (P)

Noncompliance

Explanation: The compressor has not been registered with the governmental authority. (Health, Safety and Environment Federal Regulation 29) Used oil is not disposed by a company certified by the authority.

Plan Of Action: By February 19, 2010, [Factory name] will provide a design and layout of their compressor to the General Offices of Labor for approval or registration. [Factory name] will also register its business with Semarnat (The Ministry of Environment and Natural Resources) and then begin sending their used oil to a certified center by the first week of March 2010.

**Deadline
Date:**

**Action
Taken:**

**Plan
Complete:** No

**Plan
Complete
Date:**

Health and Safety: Evacuation Requirements and Procedure

H&S.9 All applicable legally required or recommended elements of safe evacuation (such as posting of evacuation plans, the installation and maintenance of an employee alarm and emergency lighting systems, ensuring aisles/exits are not blocked and that workers are not blocked within their workstations, employee education, evacuation procedures, etc.) shall be complied with. Workers shall be trained in evacuation procedures. Alarm systems shall be regularly tested and evacuation drills shall be undertaken at least annually. (S)

Noncompliance

Explanation: It was noted that there were no emergency lights installed along the emergency evacuation route. (Health, Safety and Environment Federal Regulation 98)

Plan Of Action: [Factory name] will install emergency lights in the designated emergency evacuation route by March 22, 2010.

Deadline Date:

Action Taken:

Plan Complete: No

Plan Complete Date:

Health and Safety: Chemical Management and Training

H&S.13 All chemicals and hazardous substances shall be properly labeled and stored in accordance with applicable laws. Labels shall be placed in the local language and the language(s) spoken by workers, if different from the local language. Workers shall receive training, appropriate to their job responsibilities, concerning the hazards, risks and the safe use of chemicals and other hazardous substances. (S)

Noncompliance

Explanation: Soda containers were found being used to store chemicals and were unlabeled. (Health, Safety and Environment Federal Regulation 65)

Plan Of Action: [Factory name] has rectified the concerns noted. Moving forward, [Factory name] will ensure that all chemicals and hazardous substances are properly labeled and stored in accordance with applicable laws. [Factory name] will also ensure that inappropriate containers, like soda containers, are not used in an appropriate manner.

Deadline Date:

Action Taken:

Plan Complete: No

Plan Complete Date:

Health and Safety: Machinery Maintenance and Worker Training

H&S.18 All production machinery, equipment and tools shall be regularly maintained and properly guarded. Workers shall receive training in the proper use and safe operation of machinery, equipment and tools they use. Employers shall ensure safety instructions are either displayed/posted near all machinery or are readily accessible to the workers. (S)

Noncompliance

Explanation: It was observed on production line 1 that 5 of 15 sewing machines lacked pulley guards. (NOM-004-STPS-1999. 8.1.)

Plan Of Action: The sewing machines noted as noncompliant were not used in production, and [Factory name] has removed from production the 5 sewing machines that were lacking pulley guards.

Deadline Date:

Action Taken:

Plan Complete: No

Plan Complete Date:

Health and Safety: Medical Facilities

H&S.21 Medical facilities shall be established and maintained in factories as required by applicable laws. Medical staff shall be fully licensed and recognized under applicable local rules and regulations. An appropriate number of medical staff shall be on duty during all working hours, including any type of overtime, as required under local law. An appropriate stock of medical supplies shall be maintained at all times. Medicines of which the expiration date has passed must be replaced immediately and disposed of in a safe manner. (P)

Noncompliance

Explanation: It was noted that no internal medical services are in place at the facility. (Federal Labor Law 504)

Plan Of Action: [Factory name] is negotiating an agreement with a medical facility, located about 100 meters from its plant, to have this medical facility provide medical services to [Factory name]. If [Factory name] reaches an agreement with the medical facility, [Factory name] will seek its employees' approval on this arrangement through the annual revision of the CBA. If [Factory name] is unable to reach an agreement with the medical facility or if [Factory name's] employees do not accept this arrangement, [Factory name] will retain the services of medical personnel sufficient to meet its legal obligations.

Deadline Date:

Action Taken:

Plan Complete: No

Plan Complete Date:

Health and Safety: Sanitation in Factory Facilities

H&S.22 All facilities including factory buildings, toilets, canteens, kitchens, and clinics, shall be kept clean and safe and be in compliance with all applicable laws, including relevant sanitation, medical and safety and health regulations. (S)

Noncompliance

Explanation: It was observed that 4 stalls in the ladies' bathroom lacked seats. (Health, Safety and Environment Federal Regulation 108)

Plan Of Action: [Factory name] will ensure that all the bathrooms are continued to be kept in working and hygienic conditions.

Deadline Date:

Action Taken:

Plan Complete: No

Plan Complete Date:



Health and Safety: Drinking Water

H&S.26 Safe and clean drinking water shall be freely available at all times, within reasonable distance of the workplace. Drinking water shall be of a reasonable temperature and the means to drink water (cups, etc.) must be safe and sanitary and available in an appropriate number. (S)

Noncompliance

Explanation: The factory has not provided disposable cups for workers to use while drinking water in the facility. (Health, Safety and Environment Federal Regulation 104)

Plan Of Action: [Factory name] has installed disposable cup dispensers in the servers by the drinking fountains. [Factory name] will verify that disposable cups are continuously available.

Deadline Date:

Action Taken:

Plan Complete: No

Plan Complete Date:

Hours of Work: Suspension of Work

HOW.22 Employers can only suspend work in accordance with local laws, regulations and procedures. Workers shall be paid in full during periods of suspension, unless local laws stipulate otherwise, workers and their representative organizations (temporarily) agree otherwise, and the relevant national authorities authorize the alternative arrangement. (S)

Noncompliance

Explanation: It was observed that the factory suspended some workers because of low production on September 14, 2009. On that day the workers had not received at least the minimum wage; the authority was not notified and no agreement has been signed by the workers and the factory. (Federal Labor Law 429 and 430)

Plan Of Action: [Factory name] has only suspended laborers when it has no raw materials to keep the plant running. [Factory name] will ensure that it notifies the Labor Board with respect to work suspensions, that it documents the appropriate action by the Labor Board, and will continue to compensate the workers appropriately.

**Deadline
Date:**

**Action
Taken:**

**Plan
Complete:** No

**Plan
Complete
Date:**
